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Fifty-second session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 April 1996, at 3 p.m.

Chairman: Mr. VERGNE SABOIA (Brazil)

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The meeting was called to order at 3.10 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(agenda item 8) (continued) (E/CN.4/1996/5, 28, 29 and Add.1-3, 30, 31 and Add.1, 32 and Add.1, 33 and Add.1, 34, 35 and Add.1 and Corr.1 and Add.2, 36-38, 39 and Add.1 and 2, 40 and Add.1, 41, 121, 122 123, 124, 133 and 143; E/CN.4/1996/NGO/10, 24-26, 36, 46, 55 and 61; E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1, 30 and Add.1; E/CN.4/1995/100; A/50/512)

1. Mrs. BARNES DE KARLOTTO (International Movement for Fraternal Union Among Races and Peoples) said that, as President of the Association of Grandmothers of the Plaza de Mayo, she would like to speak about the human rights situation in Argentina.

2. The rule of law had been re-established in Argentina for over 12 years, and progress had undeniably been made in denouncing the crimes committed by the military dictatorship. A serious investigation had been conducted by the National Commission responsible for the question of disappearances, and the long-denied responsibility of the armed forces for the horrible acts committed had recently been recognized for the first time by the military chiefs. Nevertheless, all that was of no avail if the guilty parties were not punished. The amnesty laws, which enabled hundreds of culprits to be pardoned, were perceived by the victims to be a veritable denial of justice. The impunity was particularly shocking in view of the hundreds of children who had been taken from their families when their parents were arrested and had not been heard since. How could the system of justice pardon or endorse such crimes, when the young victims were still in the hands of their abductors, who held them under false names in order to exploit them or to force a false and perverse affection on them? What had the rule of law done for those innocent victims?

3. Genuine democracy would not be achieved in Argentina until the wrong done to the most vulnerable - children - had been redressed. All the Association's efforts were aimed at that goal.

4. Mr. AULA (Pax Christi International) drew the Commission's attention to four situations in geographical regions far removed from each other but similar in seriousness and duration.

5. In Kosovo, the Serbian police had been torturing thousands of Albanians for years. The primary victims were political prisoners, but former policemen and former municipal officials were also tortured to make them confess acts they had not committed. Torture was also used against ordinary citizens suspected of arms possession.

6. Peruvian legislation on restitution, compensation and rehabilitation in the wake of human rights violations was contrary to the international human rights instruments ratified by Peru. The victims of enforced disappearances, extrajudicial executions and torture and their families were unable to exercise their rights fully, and many proceedirgs instituted before the civil and criminal courts concerning alleged human rights violations had been discontinued. For compensation purposes, only acts committed not more than two years before the case was brought before the competent authorities were taken into consideration. Pax Christi International therefore requested the Commission to urge the Peruvian Government to nullify Acts Nos. 26479 and 26492 on full amnesty, and to extend the period of limitations for civil proceedings in order effectively to guarantee the right to compensation. The Peruvian authorities should provide sufficient information on their national legislation concerning restitution, compensation and rehabilitation, in accordance with Commission resolution 1995/34.

7. In Bangladesh, the State security forces continued to commit atrocities against the indigenous Jumma population, even during peace talks between the Government and the Jana Samhati Samiti, the party representing the Jumma people.

8. In East Timor, there were continuing reports of torture and ill-treatment, particularly of young people detained arbitrarily. The Working Group on Arbitrary Detention and the Special Rapporteur on Torture, Mr. Rodley, who had announced their intention to visit the territory, had not received the cooperation expected from the Indonesian authorities. It was imperative for the Special Rapporteur on Torture to be able to visit East Timor as soon as possible and Pax Christi International hoped that the Commission would have the will to take forceful measures at the current session.

9. Mr. ALI (Federation of Associations of Former International Civil Servants - FAFICS), referring to the report of the Secretary-General on the detention of international civil servants and their families (E/CN.4/1996/32), said that Governments had a special responsibility for the safety and integrity of United Nations personnel. Unfortunately, officials were increasingly called on to go into areas where there was no Government or rule of law. That had been the case in Rwanda, where despite initiatives taken by the Special Representative of the Secretary-General and the intervention of the Association for the Security and Independence of International Civil Servants, members of the local staff had been accused of genocide and detained for over a year in appalling conditions and had been unable to obtain legal assistance.

10. In the UNRWA area, two staff members had been killed and 75 detained within the past year; 12 remained in detention. A case in point was that of Martha Klein, an associate expert of UNESCO, kidnapped in Irian Jaya

(Indonesia) with 25 others by the Free Papua Movement. Appeals by the United Nations Secretary-General and the High Commissioner for Human Rights had so far not led to her release.

11. FAFICS deplored the cavalier attitude shown in certain parts of the world towards the privileges and immunities of officials of the United Nations system and wished to stress the dangers caused by the breakdown of central authority. It asked that the coverage of the Convention on the Safety of United Nations and Associated Personnel be widened as soon as possible. Until then, agreements between Governments and United Nations agencies should provide for coverage of all staff members in the areas concerned. FAFICS appealed to Governments for early ratification of the Convention, in order that it might enter into force without delay.

12. Mr. CAMACHO (Commission for the Defence of Human Rights in Central America) said that there would be no peace or genuine democracy in Central America until political crimes had been elucidated and the culprits prosecuted.

13. In Honduras, hundreds of citizens had been tortured, murdered or abducted by members of the armed forces during the "cold war" to which the country had been subjected by outside interests. A large number of persons had also disappeared. Those acts had been committed with complete impunity and the complicity of the civil authorities at the time and with support from the CIA and the Argentine military juntas. Only recently had exhumations conducted in various clandestine locations and the testimony of survivors made it possible to identify the disappeared and collect evidence against the military, some of whom had eventually been brought before the courts.

14. In the Peten lake region of Guatemala in 1995, Guatemalan and Argentine forensic medicine specialists had exhumed the bones of 162 men, women and children. The remains of disappeared persons were contained in other mass graves.

15. And yet in Chile, Brazil, Uruguay, Argentina, Guatemala, Honduras, El Salvador and Peru a "forgive and forget" approach had led to a profusion in recent years of amnesty laws that were tantamount to granting the culprits impunity. Such laws were contrary to the Inter-American Convention on Human Rights and to United Nations General Assembly resolution 47/133, and the Commission for the Defence of Human Rights in Central America called for them to be denounced as such. It also called for the areas containing mass graves to be placed under international protection, to preserve the evidence of the crimes committed and out of respect for the victims.

16. Mr. TURABI (World Society of Victimology) said that Commission resolution 1993/35, asking Governments to take "legislative or other steps to prevent and punish the practice of disappearances" was unfortunately far from being implemented. The international community and the United Nations itself might bear some responsibility in that connection by tolerating certain ongoing practices. In the case of Kashmir, for example, the practice of enforced disappearances remained linked in a way to the partial accomplishment of the work of the United Nations task of ascertaining the will of the people. In defiance of United Nations resolutions, India had not hesitated to take physical action against the defenders of rights and freedom of expression.

The practice of custodial rape, motivated by political and strategic considerations, was frequent. Several people who had cooperated with the Commission on Human Rights, the Sub-Commission and other United Nations bodies had died in detention.

17. The World Society of Victimology appealed not only to nations to comply with their international commitments, but also to the United Nations to reorient its priorities. The Commission should address the questions of torture and disappearance throughout the world and in Jammu and Kashmir in particular. As long as the people of that region were denied participation in defining their future, the State machinery would continue to generate more victims.

18. Mr. MEJIA (World Organization against Torture) said that although it was encouraging that 143 States had signed or ratified the Convention against Torture, that had unfortunately not eliminated the need for his organization to act, in the course of the previous year, on behalf of 6,394 individuals whose fundamental rights had been seriously violated in 61 countries. He drew the Commission's attention to the situation in Peru, Guatemala, Colombia, Bahrain and East Timor.

19. Concerning Peru, the Commission should denounce the situation created by the adoption of general amnesty laws and urge the Peruvian Government to investigate the violations committed, provide victims and their families with fair compensation and receive the Special Rapporteurs on Torture and on the independence of judges and lawyers.

20. Regarding Guatemala, the Commission should reaffirm its determination to monitor the situation closely and invite the national authorities to cooperate with the Expert, Mrs. Monica Pinto, and the other mechanisms. In Colombia, the Commission should closely follow the implementation of the recommendations made, particularly those made by the Special Rapporteur on Torture.

21. As for Bahrain and East Timor, where a large number of illegal or arbitrary detentions and cases of torture were reported, the Commission should urge the authorities of Bahrain and Indonesia to see that such practices were ended and to invite the representatives of the various human rights mechanisms to conduct investigations on the spot.

22. The above-mentioned cases were unfortunately not exceptions. Arbitrary detention and torture were general practices in many countries. Many States parties to the Convention against Torture had not yet brought their legislative provisions or judicial and administrative practices into line with the text of the Convention and ignored the recommendations of the Committee against Torture and other human rights defence bodies and mechanisms.

23. A firm stance by the Commission was called for. It should condemn any situation that might encourage or legitimize torture and denounce the impunity enjoyed by the culprits. It should also urge States to comply with their obligations and follow the recommendations of the various mechanisms. Finally, the World Organization against Torture appealed to States to contribute to the United Nations Voluntary Fund for Victims of Torture in order that the injured parties might be provided with appropriate compensation.

24. Mr. TEITELBAUM (American Association of Jurists) said that the Working Group on Enforced or Involuntary Disappearances had referred again to the problem of disappearances in Argentina in its latest report (E/CN.4/1996/38 and Add.1). From 1983 to 1985, the constitutional Government that had succeeded the military dictatorship had indeed inquired into the disappearances, but it had hidden important information from the National Commission in charge of the question of disappearances and from the court that was to try the military chiefs. In addition, two amnesty laws and one decree enacted between 1986 and 1989 had provided the culprits with impunity. Following complaints against the State by the families of the disappeared, 40 files containing some 10,000 pages had been recovered. Nevertheless, by hindering the inquiries, the State of Argentina had flouted article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance and disregarded the recommendations made by the Inter-American Commission on Human Rights in 1992 and the United Nations Human Rights Committee in 1995.

25. Such obstruction of justice also had an impact on the international scene. In 1995, in Italy, the public prosecutor in proceedings against the Argentine military involved in the disappearance of Italian citizens in Argentina had asked the criminal court in Rome to close the case, since the refusal of the Argentine authorities to cooperate raised insurmountable obstacles for the inquiry. The Argentine authorities claimed that the members of the military in question had already been tried and that there were no grounds for trying them a second time, but there was sufficient information and evidence for the families in question not to be deprived of their right to justice. The criminal court in Rome might also take as a precedent a recent decision by the German courts, which had issued an arrest warrant against an Iranian minister suspected of being involved in the murder of four Kurdish leaders in Berlin. Neither a suspect's position nor a country's economic interests should hinder the normal course of justice.

26. The Commission should ask the Working Group on Enforced or Involuntary Disappearances to continue to monitor the appeal filed by the families of the disappeared against the Argentine State and ask the Government to agree to a visit by the Group. The Commission and the Working Group should state their position on the right to justice of the families of Italian nationals who had disappeared in Argentina.

27. Mr. LESTOURNEAUD (International Union of Lawyers) recalled Commission resolution 1995/36, in which the Commission had again noted its concern at the increasingly frequent attacks on the independence of judges, lawyers and court officers and stressed the close link between the weakening of safeguards for them and the frequency and gravity of violations of human rights.

28. In 1995, the International Union of Lawyers had interceded with several States to demand an end to the violations, both individual and collective, committed both by States whose systems of Government might be described as totalitarian and by States considered to be democratic. The most flagrant violations had been reported in Turkey, Algeria, Colombia, Tunisia, Egypt, Mexico, Peru, India, Pakistan and France, where a lawyer of the Tlemcen bar had been refused entry into French territory for no reason.

29. Since action by specialized NGOs was not sufficient to put an end to those abuses, as some States refused to enter into dialogue, the Commission's appointment of a Special Rapporteur to look into that problem was a welcome development. Mr. Cumaraswamy's report (E/CN.4/1994/37) stressed in particular the independence that the judges of the new international criminal court should enjoy in performing their duties. For its part, the International Union of Lawyers had, on 17 November 1995, adopted a resolution on lawyers' specific role and status in the court in question; the resolution invited States and United Nations bodies to do everything possible to ensure the independence and impartiality of the court and to make it obligatory, not optional, for the accused to have the assistance of a lawyer of his choice or a lawyer officially appointed on a strictly impartial basis. Presumption of innocence for the accused must be respected absolutely and the defence lawyer should be given the means needed to conduct his work properly. No member of the court should express an opinion during the debates.

30. The International Union of Lawyers endorsed the Special Rapporteur's working methods and recommendations and welcomed his interest in the work of the NGOs. The Special Rapporteur should continue to monitor closely lawyers' role in the new international criminal court, to enable the defence to be conducted effectively and enjoy the same investigatory and evidentiary facilities as the prosecution.

31. Mr. DAR (International Human Rights Association of American Minorities) said that India, by conducting a campaign of terror in Jammu and Kashmir to subjugate a nation which was demanding its basic right of self-determination, was violating the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international human rights instruments. Among the numerous human rights activists who had been the victims of that policy, mention should be made of Mr. Jalil Andrabi, who had participated in the forty-seventh session of the Sub-Commission and had been due to attend the current session of the Commission. He had been arrested by the Indian forces on 9 March, and his body had been found on 27 March.

32. Despite the hundreds of cases of disappearance documented by Amnesty International and other human rights organizations, the Indian Government denied access to the Special Rapporteur on Torture, the Special Rapporteur on situations of extrajudicial summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and international human rights organizations. Since 1992, several individuals who had helped publicize the violations in question had also been arrested or executed. In the name of security, the Indian authorities had enacted Draconian laws that paved the way for abuses. In addition, they failed to enforce court decisions ordering investigations or the release of certain individuals. There was a total breakdown of the rule of law. Searches could be conducted anywhere, any time and without permission. In addition, the nationalist political leaders defending the Kashmiris' rights had been deliberately attacked by the Indian forces, which was a striking indication of India's conception of human rights in Kashmir under Indian occupation! The Commission should take the necessary steps to bring a halt to such disappearances and other human rights abuses.

33. Mr. NAIR (Asian Buddhist Conference for Peace) said that the excellent latest report of the Special Rapporteur on Torture, Mr. Rodley (E/CN.4/1996/35) left the impression that little concrete action had been taken to abolish that revolting practice. His organization noted with concern that the Special Rapporteur had been prevented from attending the open-ended working group on a draft optional protocol to the Convention against Torture due to a lack of financial resources. Of equal concern was the fact that the limits imposed by the Conference Services Division had forced the Special Rapporteur to publish information transmitted to Governments and other information in abbreviated form. The only weapon against torture available to the Commission and international public opinion was their ability to express public abhorrence. If even that was to be circumscribed, was the efficacy of the whole exercise not being called into question? He trusted that the Commission would rectify that situation.

34. In the Asia-Pacific region, despite the public protestations of many Governments, transparency was not their strong point. India and Indonesia had yet to invite the Special Rapporteur, who had, however, visited Pakistan. Bangladesh had yet to reply to cases transmitted in 1994 and China was still considering whether to invite the Special Rapporteur. Countries such as Afghanistan, Cambodia, China, Nepal, the Philippines and Sri Lanka had ratified the Convention against Torture, but had not yet incorporated its principles into their national legislation.

35. The Special Rapporteur referred specifically to the situation in India, where many abuses were committed under the cover of the Armed Forces (Special Powers) Act. The validity and constitutionality of the Act had been questioned by the Human Rights Committee when it had considered India's second periodic report in 1991, and several cases challenging the constitutionality of the Act were pending before the Indian Supreme Court; some had been pending for over a decade. The Act gave members of the armed forces such extensive immunity from prosecution that the Indian National Human Rights Commission itself was virtually powerless to act. It was a clearly-established fact, however, that the phenomenon of impunity was one of the main factors contributing to torture.

36. The Commission must therefore find a way to follow up the observations of the Human Rights Committee and its own special rapporteurs and working groups if torture was to be effectively combatted.

37. Mrs. RISHMAWI (International Commission of Jurists) expressed appreciation for the Special Rapporteur's approach and analysis in his report on the independence of judges and lawyers. That important work should continue.

38. In 1995, according to the information available to the ICJ, 337 jurists in 51 countries had been sanctioned or subjected to acts of violence for carrying out their professional duties. In Colombia, for example, where the situation had progressively worsened over the past years, the secrecy surrounding the identity of judges, prosecutors and witnesses violated the basic principles of justice, and impunity for political crimes continued to be pervasive. In Guatemala, Kenya, Nigeria and Northern Ireland, judges and lawyers had been threatened and even attacked. Many lawyers in Turkey were

too frightened to speak about human rights abuses for fear of reprisals by the authorities. The 1991 Anti-Terror Law paved the way for abuses in the name of respect for the indivisible unity of the State. In Algeria, most of the provisions of the decree establishing special courts, cancelled in February 1996, had been transferred to the Penal Code and the Law of Criminal Procedures. In India, the authorities had taken a similar approach. In Peru, secret trials were conducted in military tribunals and the action of the defence was hindered. Military courts which tried civilians were also active in Egypt; their decisions were not subject to appeal and trials did not conform to international standards.

39. Many countries stated that they resorted to exceptional justice because the regular judiciary was too slow. It was true that the judicial institutions in Peru and Argentina were given extremely insufficient resources. The system of justice in Rwanda, Ethiopia and Cambodia also left much to be desired. Perhaps most shocking of all was an agreement concluded in 1995 between a commercial company and the Government of Papua New Guinea making all proceedings against that company a criminal offence.

40. The Special Rapporteur, a Malaysian national, had been threatened with libel suits after publicly stating that he was investigating complaints that highly-placed businessmen were manipulating the Malaysian judicial system. That was a serious precedent that called into question the privileges and immunities granted special rapporteurs by the Convention on the Privileges and Immunities of the United Nations.

41. Mr. KHELIFI (Algeria) said that his country had been working since independence to establish a system that would guarantee the protection of human rights and fundamental freedoms. The process that had begun with the 1989 Constitution, which enshrined political pluralism, separation of powers, independence of the judiciary and fundamental rights, and had culminated in the establishment in 1992 of the National Human Rights Observatory, had unfortunately been diverted due to problems linked to the political and economic crisis, which had fostered a radical Muslim movement.

42. Despite those difficulties, the State was continuing to use all available legal means against religious extremism and terrorism and to promote the rule of law. Among the main steps taken were, first, the unification of the judicial system (Orders Nos. 95/10 and 95/11 of 25 February 1995, which amended the Code of Criminal Procedure and Penal Code and annulled Legislative Decree No. 92/03 of 30 September 1992, concerning terrorism, subversion and the special subversion courts). In December 1993, it had been decided to suspend the death penalty. Order No. 95/12 of 25 February 1995 provided for measures of clemency and amnesty for persons involved in terrorist acts. More than 1,000 individuals had benefitted from those measures. The closing of the Ain-M'guel security centre in November 1995 had permanently ended the practice of administrative detention. In March 1996, the system had been strengthened by the appointment of an Ombudsman of the Republic. It was possible for the Ombudsman to receive appeals by any individual who had exhausted all remedies and felt that he or she had been harmed by the malfunctioning of an institution or public service.

43. Community associations and the education system also helped to develop public awareness and teach tolerance and respect for human dignity. In cooperation with UNESCO, a chair in human rights education had been established at the University of Oran.

44. Algeria, which fulfilled all of its international obligations under the Covenants and other conventions, remained determined to help promote and defend human rights.

45. Mr. MUÑOZ-LEDO (Mexico) said that his Government cooperated fully with the Special Rapporteur on torture and supported the Special Rapporteur's work. According to the National Human Rights Commission, torture was the second most prevalent subject of complaints registered at the end of 1990, but had been in only fifteenth place from May 1994 to May 1995. The National Commission had received 246 complaints of torture in 1993 as against 46 in 1995. The Mexican Government did not deny that there were some isolated cases of torture but rejected the assertion that torture was widely used during prosecutions for the purpose of intimidating detainees and extracting confessions. The Federal Act of 1991, designed to prevent and punish torture, enshrined the principle that evidence obtained by unlawful means was null and void. The practice of torture had diminished since its enactment. Under the Act, the federative States were progressively adopting specific laws threatening torture as a criminal offence. Although acts of torture had thus far been punished in the same way as offences resulting in bodily injury, an amendment was under way to increase penalties for such acts.

46. The Mexican Government had agreed to invite the Special Rapporteur to visit Mexico. There was no systematic practice of torture in Mexico and the visit would take place in the framework of the cooperation that should prevail between thematic mechanisms and Governments.

47. Mrs. MAIWAND (Observer for Afghanistan) said that her Government recognized the right of all persons subjected to a form of detention or imprisonment to be defended; under Islamic law, any forced or involuntary disappearances were punishable. Regarding the cases of disappearance reported in Afghanistan during the period 1978-1979 (report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1996/38, para. 63), the Afghan Government was convinced that the number of persons who had disappeared during the Soviet occupation of Afghanistan was very high. Concerning individuals reported to have disappeared in the Islamic State of Afghanistan, a reply had been transmitted to the Working Group on 23 January 1996: after an in-depth search, the Afghan authorities had found no prisoner case-file in the name of Mr. Abdul Rahim Naif El Khatib (a Jordanian journalist who had disappeared on 22 July 1989); as for Mr. Zia Nassry, an American citizen of Afghan origin who had disappeared on 17 September 1992 - and not in 1993 as stated in the Working Group's report - he had not been arrested by the security forces. It should be stressed that, after the Government changeover in April 1992, all prisoners of war and political prisoners had been released.

48. Mrs. KAWSAR PARVEEN (International Institute for Non-Aligned Studies) said that the Commission should not only condemn the States responsible for disappearances, but also bring attention to bear on the activities of terrorists. In the State of Jammu and Kashmir in India, her State of origin,

terrorists kidnapped men, women and children, ultimately killing many of them. Her own kin had disappeared at the hands of terrorists. Kidnapped women were tortured, raped and killed. Young boys who refused to join the militants were found to have disappeared. So great was the terror that no one dared speak about such cases. Those were serious violations of the right to life, and the Commission should intervene in the matter.

49. Mrs. TANAKA (International Movement against All Forms of Discrimination and Racism - IMADR) drew the Commission's attention to the situation of the members of national minorities who were detained due to their non-violent activities in the cause of national autonomy or independence. In States where military conflicts were taking place, the international community should insist on the application by the State of the principles of humanitarian law, particularly with regard to detention of the leaders of national minority movements. The right to express the demand for the right to self-determination should be guaranteed. The members of autonomy movements who were arrested by the Government authorities should be treated as political detainees. As long as their activities were non-violent, they were "prisoners of conscience", according to the definition given that term by Amnesty International. The international community, or at least the close relatives of the detainees, should be informed of their situation.

50. A case in point existed in China, where Mongolian Chinese intellectuals, including Mr. Hada and Mr. Hei Long, had been arrested by the Chinese authorities in the capital of the Inner Mongolia Autonomous Region, on suspicion of being "national separatists" having established a "Southern Mongolian Democratic Alliance". Nothing had been heard of them since their arrest. As their activities had been non-violent and their objective to obtain a high degree of national autonomy, as guaranteed by the Constitution of the People's Republic of China, it was not likely that they would endanger the national integrity of China.

51. IMADR appealed to the Government of China to permit the detainees to communicate with their relatives, or at least to inform them, as well as the international community of their situation. It was to be hoped that the Commission would establish unambiguous standards requiring States to inform the international community about the situation of detained members of national minorities, irrespective of the legitimacy of their claim.

52. Mrs. SPALDING (Indigenous World Association) drew the Commission's attention to the situation of women in detention and the death sentence which infection by HIV as a result of rape or improper prison medical practices represented for them and denounced the discriminatory practices towards prisoners who had tested positive for HIV. She looked forward to studying the results of the initial work by UNAIDS.

53. Mrs. EXUM (Indigenous World Association) stressed the plight of women in prison, which in her view deserved special attention. There were widespread differences in conditions of detention for men and women: most prisons were designed for men, women had less access than men to educational, job training, counselling and family support programmes, women's medical resources were inferior to those of male detainees, women were more likely to be victims of

violent acts and rape, and women were often separated from their children, which also raised the issue of what happened to the children and who would assume responsibility for them while the mother was in prison.

54. The Secretary-General's report on children and juveniles in detention (E/CN.4/1996/31 and Add.1) was of interest, but greater focus was needed on the effects of detention on women. Account should also be taken of the growing number of members of minorities, indigenous people, economically marginalized people and victims of physical and sexual abuse who filled the prisons. The preliminary report of the Special Rapporteur on violence against women (E/CN.4/1995/42) noted the need for further enforcement of penal and jail codes that conformed to the Standard Minimum Rules for the Treatment of Prisoners, but it did not fully examine the myriad issues facing women in prison. However, the Special Rapporteur had expressed interest in further investigation of the problems and needs of women in prison, and the Indigenous World Association was prepared to work with the Special Rapporteur in the special area of minority and indigenous women.

55. The Association recommended that special attention should be given to such issues as sentencing, alternative treatment and rehabilitation programmes, prenatal and post-natal care, prison violence, vocational and job training, etc., and that the issue of women in prison should be included in the work of the Sub-Commission's Working Group on Minorities.

56. Mrs. BAUTISTA (Latin American Federation of Associations of Relatives of Disappeared Detainees) expressed deep concern at the 824 new cases of disappearance reported to the Working Group on Enforced or Involuntary Disappearances in 1995 and noted that a high percentage of them had occurred in Latin America. It was also distressing that, of the 50,000 cases registered by the Working Group, 43,000 had not yet been clarified and very few Governments had taken steps to prevent further disappearances or clarify existing cases. In that connection, she contested the information that Colombia had enacted a law making enforced disappearance a criminal offence: the five bills that had been submitted to the Congress since 1988, when the Working Group had visited Colombia, had all been withdrawn when the armed forces and most of the members of Congress maintained that enforced disappearances came within the purview of military justice.

57. FEDEFAM was also concerned at the many obstacles to the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance, in particular by impunity and states of emergency. It also deeply regretted that some countries, such as Mexico, Colombia and Guatemala, ignored the recommendations of the rapporteurs and working groups. Mexico and Colombia had enacted laws and decrees authorizing detentions without a judicial warrant. In Colombia, paramilitary groups were on the way to being legalized and recognized as partners to negotiation.

58. The right of the families of disappeared persons to be told the truth and to see the guilty prosecuted was not respected. Most judicial proceedings in Latin America had been broken off by amnesty, impunity or "clean slate" laws. Tolerating such laws in Argentina, Brazil, Uruguay, Chile and El Salvador, encouraged other Governments to enact similar laws - as Peru had done - and flout the rule of law. The resumption of disappearances in Mexico should make

the Commission aware of the danger to world society represented by the proliferation of laws of that type, and of the harm done to democracy by military interference in the civil government. In that connection, she referred to an incident in Honduras, where the armed forces had resisted civilian justice, and to the fact that the Italian procurator investigating the disappearance of Italian citizens in Argentina had recently asked for proceedings to be dropped on the basis of the "due obedience" and "clean slate" laws. That expansion of impunity should lead the Commission to take decisive and immediate steps by, for example, stating its position on the situation in Mexico and Peru, and to appoint a Special Rapporteur on Colombia.

59. Mrs. ROMERO (International Association of Democratic Lawyers) drew the Commission's attention to the particularly serious situation in Colombia, where from October 1994 to August 1995 human rights NGOs had noted hundreds of cases of arbitrary detention, torture and cruel, inhuman or degrading treatment, not to mention all the unreported or hidden cases. The great majority of those responsible for such human rights violations had gone unpunished.

60. When the Committee against Torture had considered the periodic report of Colombia, it had expressed its deep concern at the Government's failure to respect the provisions contained in the United Nations Convention against Torture and the systematic practice of torture by the army and police in certain regions of the country, especially in rural areas. The powers of the security forces had been increased under the emergency legislation, the state of emergency still being in force in Colombia, and the main activity of the secret judicial police established on the pretext of combating drug trafficking was to imprison the leaders of social, peasant and trade-union organizations. The conditions of detention of both political and ordinary prisoners were unjust and inhuman and typically involved very severe disciplinary measures including certain types of punishment that were prohibited in the Standard Minimum Rules for the Treatment of Prisoners.

61. In addition, lawyers who defended political prisoners were persecuted; some had been forced into exile and others even murdered. The Colombian Government had considered introducing the death penalty for certain offences, contrary to its international commitments.

62. The International Association of Democratic Lawyers therefore asked the Commission to establish an effective mechanism to monitor the human rights situation in Colombia and help the Colombian people and Government resolve the problems they had been facing in that area for the past 10 years.

63. Mr. PASHA (Himalayan Research and Cultural Foundation) said that the Commission's efforts to find means and methods of eliminating the inhuman practice of torture used by certain Governments to get rid of adversaries were laudable, but that it should also look into the methods used by certain terrorist groups to ensure their demands were met. One example was the Pakistan-sponsored group Al Faran, which had murdered the Norwegian hostage, Mr. Christian Ostro, but there were other examples in the State of Jammu and Kashmir, often made up of Afghan mercenaries, who used the barbaric methods of medieval times to silence their opponents. He referred to the cases of a scholar of Islamic studies and Hinduism and an independent political activist who were atrociously tortured at length and then killed.

64. The Himalayan Research and Cultural Foundation therefore urged the Commission to take note of the outrages being committed in Jammu and Kashmir, by such mercenary groups, supported by Pakistan - there was irrefutable evidence to that effect - and to bring pressure on Pakistan to put an end to them.

65. Mr. BAUER (Article 19 - International Centre against Censorship) commended the efforts of the Special Rapporteur on freedom of opinion and expression to establish a constructive dialogue with Governments to improve their understanding of the right to freedom of expression, the protection of which required, as indicated in the Special Rapporteur's report (E/CN.4/1996/39), a continuous political commitment that included implementation of specific policies and programmes. Article 19 welcomed the attention the Special Rapporteur had given to violations of the right to freedom of expression, justified on the basis of outmoded notions of national security, and the view expressed by some Governments that human rights were part of an alien culture not suited to the countries they governed. However, the only acceptable ground for restricting freedom of information was the preservation of national security. That was a basic principle of the Johannesburg Principles on National Security, Freedom of Information and Access to Information, which the Special Rapporteur had recommended that the Commission should endorse.

66. Article 19 invited the Special Rapporteur to continue to examine restrictions on freedom of expression and information imposed by Governments on national security grounds in such countries as Turkey, Nigeria and the Gambia, and to make appropriate recommendations in order that no State might improperly use such considerations to justify restrictions.

67. Article 19 would also like the Special Rapporteur to look into the deterioration of relationships between groups in societies and between States arising from differing interpretations of religious laws and the failure to respect the principles of article 19 of the Universal Declaration of Human Rights, which had led countries such as Algeria, Bangladesh, Iran and the Sudan to pronounce fatwas against writers and murder journalists in the name of Islam. It invited the Governments of the 52 States of the Organization of the Islamic Conference (OIC) to enter into a dialogue with the Special Rapporteur on the question of violations of the right to freedom of opinion and expression committed not only by the State but by other actors. In addition, since violations of freedom of expression were often reliable indicators of larger patterns of human rights violations, the Special Rapporteur might make a significant contribution to the development of an effective international early warning procedure that would enable the international community to act on a preventive basis.

68. Article 19 strongly urged the Commission to renew the mandate of the Special Rapporteur for a further three years and to ensure the allocation of sufficient resources to support the effective performance of that mandate.

69. Mr. XIAO Qiang (International League for Human Rights) said that, although many countries had ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it remained a dead letter in many of those countries where torture was still

practised systematically and often at the instigation of the authorities. China had become a party to the Convention in 1988, but torture was endemic in Chinese detention centres and prisons. Together with poor hygiene, inadequate food and solitary confinement, it was a routine part of the process of eliciting confessions and compliance from detainees.

70. Such treatment was applied to ordinary prisoners as well as political detainees. He referred in that connection to the case of Hu Jian, who had been sentenced to 10 years in prison for involvement in a peaceful democracy movement in 1989 and had died after being transferred to a mental hospital for conducting a series of hunger strikes. His mother had received an official notice that her son had died "of natural causes", and her repeated requests to see her son's body, the official death certificate or the results of any autopsy had all been ignored.

71. The prevalence of torture in China was due first to failings in the legal system, including the lack of an independent judicial system, the denial of the right of the accused to early access to legal counsel and the acceptance by trial judges of evidence obtained through torture. The two other reasons were the overly tolerant handling of cases of torture by the Chinese Communist Party, which was reflected in the generally light punishments or total exemption of the culprits from prosecution, as well as the vast powers given to the law enforcement and security forces, which were not subject to supervision by any outside agency.

72. The International League for Human Rights therefore asked the Commission to encourage China, on the one hand, to remedy that situation and fulfil its obligations under the Convention, and on the other, to take the necessary steps to separate the judiciary from the executive authorities and protect it from Party influence.

73. The CHAIRMAN invited delegations wishing to exercise their right of reply to take the floor.

74. Mr. FASEHUN (Observer for Nigeria) said his delegation wished to protest the allegations of corruption and oppression made against his country by the Minister for Foreign Affairs of Canada. The Government of Nigeria was actively engaged in a reform process to ensure equality of opportunities for all and to promote a political and economic power-sharing arrangement that would satisfy the needs of all communities living in the country. Those arrangements had been concluded by a democratically-elected national constitutional conference and were being studiously implemented by the Government, whose efforts enjoyed the overwhelming support of Nigerians.

75. The problem of corruption was worldwide and not specific to Nigeria, whose record as a responsible member of the world community was clear and recognized. There was therefore no reason to express outrage at events in Nigeria.

76. Mrs. SHAO Wenhong (China) said she deeply regretted the fact that certain non-governmental organizations had once again seen fit to criticize the Chinese judicial system despite the fact that the Chinese delegation had already provided a wealth of clarifications on the question. As for the death

penalty, which China was accused of misusing, she pointed out that, not only was China not the only country to maintain it, but it was most careful in using it. Under the Penal Code, the death penalty could be pronounced only for particularly heinous crimes committed under horrible circumstances and endangering the people's or country's security, and could not be imposed on minors or pregnant women. Every individual condemned to death was entitled to appeal to a higher court and there was also the possibility of a pardon or commutation of sentence. Her delegation therefore categorically rejected all the allegations of some NGOs to the effect that the death penalty was applied indiscriminately and torture practised systematically in China, for they were devoid of any basis and were simply lies.

77. Mrs. BU (Observer for Honduras), replying to the allegations made by one NGO concerning her country, said that, as part of its efforts to achieve national reconciliation, the Government of Honduras had ordered the opening of thorough investigations into the cases of disappearance in Honduras during the 1980s and had even asked for international financial assistance for that purpose. The inquiries had progressed to the point of making it possible to identify the alleged culprits. Several high-ranking or retired members of the military suspected of involvement in the disappearances might be prosecuted. It should be stressed that the judiciary had acted with complete impartiality, independence and equity.

78. The Government of Honduras had pledged to implement in the short term an apolitical civil policy adapted to the country's new situation and consistent with the rule of law. As part of that policy, an act recently adopted by the National Congress had established the Office of the Human Rights Commissioner, which had begun operating at the beginning of the year.

79. Mr. TORELLA DI ROMAGNANO (Italy), replying to the American Association of Jurists, explained that criminal proceedings had been instituted by the Public Prosecutor in Rome concerning disappeared persons in Argentina having both Italian and Argentine nationality. However, the international rogatory request filed with the Argentine authorities in order to acquire elements of proof had been rejected, on the ground that the cases in question had already been tried by Argentine courts and, according to the principle "non bis in idem", could not be retried in Italy. The Italian Public Prosecutor had asked for the case to be put on file, but no decision had yet been taken; nevertheless, the Italian Minister of Justice, in accordance with Italian legislation, was considering authorizing the continuation of criminal proceedings in Italy in the cases concerning Italian citizens, despite the fact that they had already been judged in Argentina.

The meeting rose at 5.30 p.m.